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100 JUL 19 P.D. 35  
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NORTHERN DISTRICT OF CALIFORNIA  
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DMR

22 UNITED STATES DISTRICT COURT

23 NORTHERN DISTRICT OF CALIFORNIA

24 THOMAS MITCHELL,

CV 13 3378  
No.

25 Plaintiff,

26 CLASS ACTION COMPLAINT

27 v.

28 FORD MOTOR COMPANY,

JURY TRIAL DEMANDED)

Defendant.

1 TABLE OF CONTENTS  
2

	<u>Page</u>
I. INTRODUCTION.....	1
II. JURISDICTION .....	2
III. VENUE.....	2
IV. PARTIES .....	3
A. Plaintiff.....	3
B. Defendant .....	3
V. FACTUAL ALLEGATIONS.....	4
A. Introduction of MyFord Touch.....	4
B. Description of MyFord Touch.....	5
C. MyFord Touch Has Been Plagued with Serious Defects .....	8
D. The TSBs and Warranty Extension .....	9
E. Similar Experiences and Complaints by Consumers.....	13
F. Fallout From the MyFord Touch Problems.....	18
VI. CLASS ALLEGATIONS.....	20
VII. CLAIMS FOR RELIEF.....	23
A. Claims Brought on Behalf of the Nationwide Class .....	23
COUNT I (VIOLATION OF MAGNUSON-MOSS WARRANTY ACT).....	23
COUNT II (BREACH OF EXPRESS WARRANTY) .....	24
COUNT III (BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE) .....	25
COUNT IV (BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY) .....	26
B. Claims Brought on Behalf of the California Class .....	27
COUNT I (VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW).....	27
COUNT II (VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT) .....	28
C. Claims Brought on Behalf of the Iowa Class .....	30
COUNT I VIOLATIONS OF THE PRIVATE RIGHT OF ACTION FOR CONSUMER FRAUDS ACT (IOWA CODE § 714H.1, ET SEQ.) .....	30

1	i)	Possessed exclusive knowledge of the defects rendering the Class	
2		Vehicles more unreliable than similar vehicles;.....	31
3	COUNT II	BREACH OF EXPRESS WARRANTY (IOWA CODE § 554.2313).....	32
4	COUNT III	BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY (Iowa	
		Code § 544.2314) .....	34
5	COUNT IV	BREACH OF CONTRACT/COMMON LAW WARRANTY (BASED ON IOWA	
6		LAW).....	35
7	VIII.	REQUEST FOR RELIEF.....	35
8	IX.	JURY TRIAL DEMAND.....	36
9			
10			
11			
12			
13			
14			
15			
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17			
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19			
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1 Plaintiff, Thomas Mitchell, individually, and on behalf of all others similarly situated,  
 2 alleges as its Complaint and Demand for Jury Trial, the following:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this action individually and on behalf of all other current and former  
 5 owners or lessees of Ford, Lincoln and Mercury vehicles equipped with a “MyFord Touch,”  
 6 “MyLincoln Touch,” or “MyMercury Touch” system<sup>1</sup> (“Class Vehicles”). Plaintiff seeks damages  
 7 and equitable relief for Defendant Ford Motor Company’s (“Ford”) conduct as alleged in this  
 8 Complaint.

9 2. Ford introduced MyFord Touch in certain of its vehicles beginning with model year  
 10 2011. As used herein, MyFord Touch consists of three Liquid Crystal Display (LCD) interfaces  
 11 that are powered by Ford “SYNC,” an operating system that was designed by Microsoft. MyFord  
 12 Touch allows the vehicle owner to, among other things, operate the audio systems in the vehicle,  
 13 use the GPS navigation technology, control the climate systems in the vehicle, and operate a  
 14 Bluetooth enabled mobile telephone or mobile device. In addition to operating these various  
 15 functions, MyFord Touch is also responsible for operating certain safety systems in the vehicle.  
 16 For example, when the system detects that the vehicle has been involved in a collision, the system  
 17 will dial 9-1-1 and connect the vehicle to an emergency services provider.

18 3. Ford has touted MyFord Touch as a revolutionary feature in its vehicles, a feature  
 19 for which it charges a significant premium. However, since its launch in 2011, the system has been  
 20 an unmitigated disaster for Ford. Indeed, the Internet is replete with complaints from Ford owners  
 21 who have experienced significant problems with the system. Many vehicle owners complain that,  
 22 among other things, the system freezes up, stops working, the screen “blacks out,” the system fails  
 23 to respond to touch commands, and fails to connect to the user’s mobile phone. Simply stated, the  
 24 system fails to work as intended or as promised by Ford.

25 4. Ford’s customers are not the only ones who recognize that the system has been a  
 26 failure. Shortly after the launch of the system in 2011, Ford’s CEO, Alan Mulally, in numerous

27 <sup>1</sup> In this complaint, MyFord Touch, MyLincoln Touch, and MyMercury Touch will be  
 28 collectively referred to as “MyFord Touch.”

1 interviews, admitted that MyFord Touch suffers from numerous problems. Ford has also  
2 recognized that it has a problem insofar as it has issued three purported "updates" which it claimed  
3 corrected the issues plaguing the system. However, none of these updates have corrected the issues  
4 that the Plaintiff and the other Class members have experienced with their MyFord Touch systems.  
5 Indeed, according to Ford's own technical support team, there is no fix for the problems  
6 experienced by Plaintiff and the other Class members.

7 5. As a result of Ford's unfair, deceptive, and/or fraudulent business practices, and its  
8 failure to disclose defects in the MyFord Touch system, owners and/or lessees of the Class  
9 Vehicles have suffered losses in money and/or property.

10 6. Had Plaintiff and the other Class members known of the defects in the MyFord  
11 Touch system at the time they purchased or leased their vehicles, they would not have purchased or  
12 leased those vehicles, or would have paid substantially less for the vehicles than they did.

13 7. Plaintiff, individually and on behalf of the other members of the proposed Class,  
14 brings this action for Defendant's statutory and common law violations, including its violation of  
15 applicable consumer protection and deceptive trade practice statutes and Defendant's breaches of  
16 its warranties to Plaintiff and the other Class members.

## 17 II. JURISDICTION

18 8. This Court has jurisdiction pursuant to the Class Action Fairness Act of 2005, 28  
19 U.S.C. § 1332(d) because the proposed class consists of 100 or more members; the amount in  
20 controversy exceeds \$5,000,000, exclusive of costs and interest; and minimal diversity exists. This  
21 Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1337.

## 22 III. VENUE

23 9. Venue is proper in this District under 28 U.S.C. § 1331 because a substantial part of  
24 the events or omissions giving rise to Plaintiff's claims occurred in this District. Ford has  
25 marketed, advertised, sold, and leased the Class Vehicles within this District.

## IV. PARTIES

**A. Plaintiff**

10. Plaintiff Thomas Mitchell is an individual residing in Sioux City, Iowa. On or about November 8, 2010, Plaintiff acquired a 2011 Lincoln MKX equipped with a MyFord Touch system (VIN#2LMDJ8JK0BBJ04499), which it purchased from Sioux City Ford/Lincoln/Mercury, an authorized Ford dealership located in Sioux City, Iowa.

11. Plaintiff has been a devoted purchaser of Lincoln vehicles for many years and generally, purchased a new Lincoln vehicle every five years. He had purchased a Lincoln vehicle in 2009 and pursuant to his typical practice, would have purchased a new Lincoln vehicle again in 2014. Mr. Mitchell is a retired engineer, and learned about the MyLincoln Touch system in 2010. Because he was impressed with the technology associated with MyLincoln Touch, and believed the system offered a number of attractive features, Mr. Mitchell deviated from his past practice of purchasing a new Lincoln every five years, and instead, purchased a Lincoln MKX in late 2010 in order to obtain a vehicle with MyFord Touch.

12. Unknown to Plaintiff at that time he purchased his 2011 Lincoln MKX, was that the MyFord Touch system in his Lincoln MKX is defective and suffers from numerous issues including: system lockup and total system failure; periodic non-responsiveness to peripheral devices (such as MP3 players and smartphones); and periodic non-responsiveness to voice commands. Defendant Ford knew about, but did not disclose, the defect to Plaintiff and he purchased his Lincoln MKX under the reasonable, but mistaken belief that the MyFord Touch system would perform in a reasonable manner. It did not.

**B. Defendant**

13. Ford Motor Company is a corporation doing business in all fifty states (including the District of Columbia) and is organized under the laws of the State of Delaware, with its principal place of business in Dearborn, Michigan. At all times relevant to this action, Ford manufactured, sold, leased, and purportedly warranted, under the Ford, Lincoln, and Mercury brand names, the Class Vehicles at issue throughout the United States. Defendant Ford designed, manufactured, and installed the defective MyFord Touch systems in the Class Vehicles. Defendant

1 Ford also develops and disseminates the owner's manuals, and warranty booklets relating to the  
 2 Class Vehicles.

3 **V. FACTUAL ALLEGATIONS**

4 **A. Introduction of MyFord Touch**

5 14. In January 2010, Ford announced the roll-out of MyFord Touch.<sup>2</sup> It hailed MyFord  
 6 Touch as an "intuitive driver experience."<sup>3</sup> The launch of MyFord Touch was also promoted by  
 7 Ford as a significant reason to purchase a Ford vehicle.

8 15. At the launch of MyFord Touch in January 2010, Ford's CEO, Alan Mulally said,  
 9 referring to MyFord Touch, "***this is a reason to buy Ford*** . . . It's just smart design. We think it's a  
 10 value proposition."<sup>4</sup> Ford and the consumer community viewed MyFord Touch as bearing such  
 11 significance that Ford CEO Mulally delivered the keynote address at the Annual Consumer  
 12 Electronics show in 2010 in Las Vegas specifically to unveil MyFord Touch.

13 16. With MyFord Touch, Ford aimed to create a technological infotainment system that  
 14 would be available not only on its higher-end vehicles, but would become the signature feature of  
 15 all Ford vehicles.

16 17. At the time MyFord Touch was announced by Ford, Ford's Vice President for  
 17 Group Product Development stated, "[d]emocratization of technology is a key aspect of our  
 18 product plan . . . With [MyFord Touch], we didn't want to create an upscale electronics package  
 19 and just put it on our highest-end vehicles. This technology will be available across our full range  
 20 of vehicles: From our affordable small cars to the ultimate Lincoln, we're going to make a  
 21 premium, appealing and intuitive experience available to everyone."<sup>5</sup>

22  
 23  
 24 <sup>2</sup> <http://www.zdnet.com/blog/gadgetreviews/ford-announces-myford-touch-with-dual-4-2-lcds-wi-fi-and-improved-voice-recognition/10838>.

25 <sup>3</sup> <http://www.zdnet.com/blog/gadgetreviews/ford-announces-myford-touch-with-dual-4-2-lcds-wi-fi-and-improved-voice-recognition/10838>.

26 <sup>4</sup> <http://www.nydailynews.com/news/money/ford-unveils-cool-new-in-car-technology-consumer-electronics-show-article-1.170650>.

27 <sup>5</sup> <http://www.gminsidenews.com/forums/f37/ford-announces-myford-touch-technology-87723/>.

1. 18. While the roll-out of MyFord Touch was scheduled to begin in 2010 on only a  
 2. limited number of Ford vehicles were equipped with MyFord Touch, when it announced the launch  
 3. of MyFord Touch, Ford stated that by 2015, at least 80% of Ford vehicles would be equipped with  
 4. MyFord Touch.<sup>6</sup>

5. 19. When announcing the roll-out of MyFord Touch, Ford announced that it would be  
 6. installed on Lincoln and Mercury vehicles as well, and would be called MyLincoln Touch and  
 7. MyMercury Touch respectively.<sup>7</sup>

8. 20. When Ford announced MyFord Touch, Ford's Vice President for Global Product  
 9. Development stated that MyFord Touch, "delivers a premium interior experience that will help  
 10. consumers fall in love with their vehicles again . . ."<sup>8</sup>

11. 21. Ford designed MyFord Touch to take advantage of new technologies in order to  
 12. simplify a user's experience with the vehicle. As Ford's President stated at the time MyFord Touch  
 13. was rolled out, "[a]s we began developing [MyFord Touch's] capability, we saw this groundswell  
 14. of new technology, new functionality and incredible capability opening up to consumers . . . It was  
 15. readily apparent that unless we devised an intuitive interface to help drivers manage these  
 16. capabilities, they could detract – and possibly distract – from the driving experience."<sup>9</sup>

17. **B. Description of MyFord Touch**

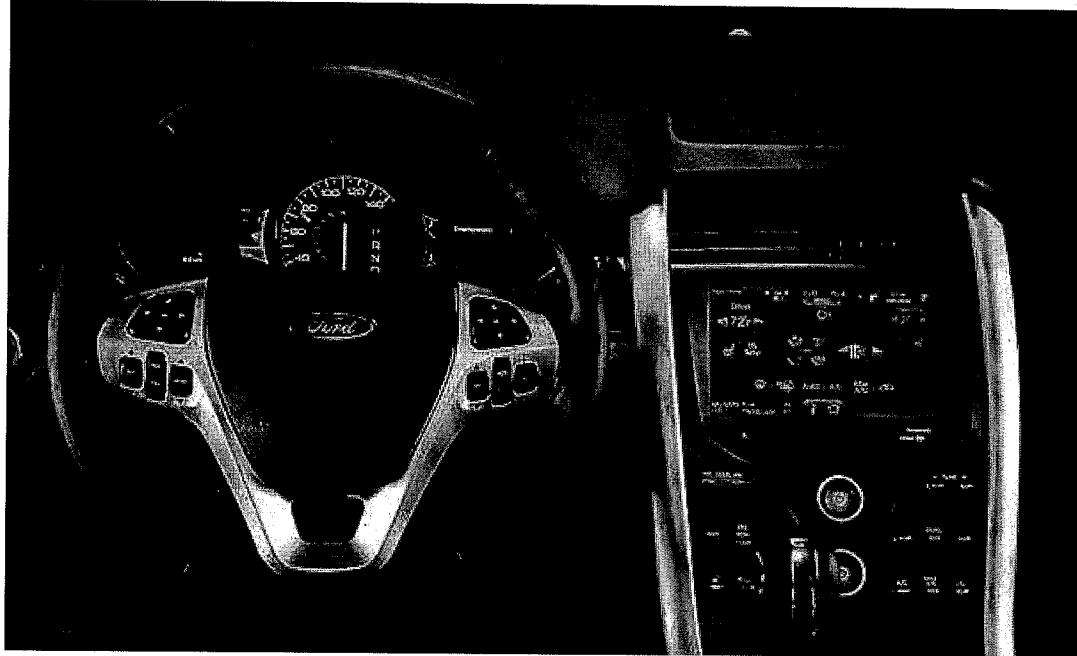
18. 22. MyFord Touch consists of three LCD interfaces that provide the gateway between  
 19. the user and the various technological features that comprise the MyFord Touch system. The  
 20. following photograph depicts the MyFord Touch system in a Ford vehicle:

21.  
 22.  
 23.  
 24. <sup>6</sup> <http://www.zdnet.com/blog/gadgetreviews/ford-announces-myford-touch-with-dual-4-2-lcds-wi-fi-and-improved-voice-recognition/10838>.

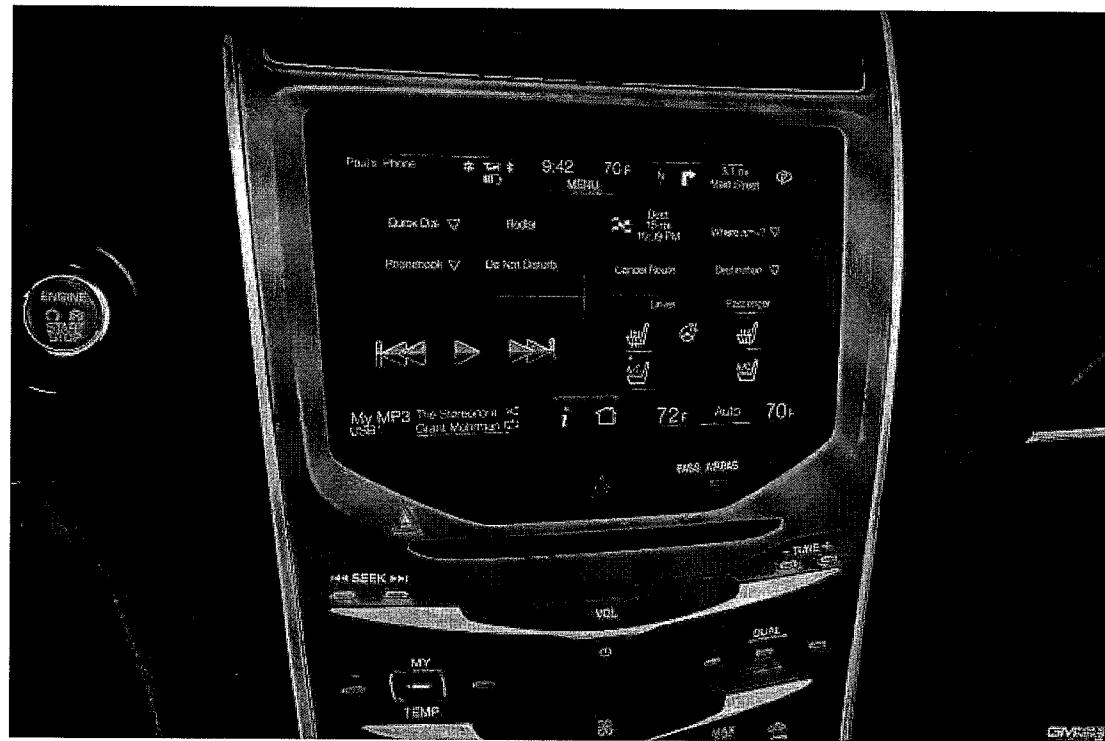
25. <sup>7</sup> *Id.*

26. <sup>8</sup> <http://www.gminsidenews.com/forums/f37/ford-announces-myford-touch-technology-87723/>.

27. <sup>9</sup> <http://www.gminsidenews.com/forums/f37/ford-announces-myford-touch-technology-87723/>.



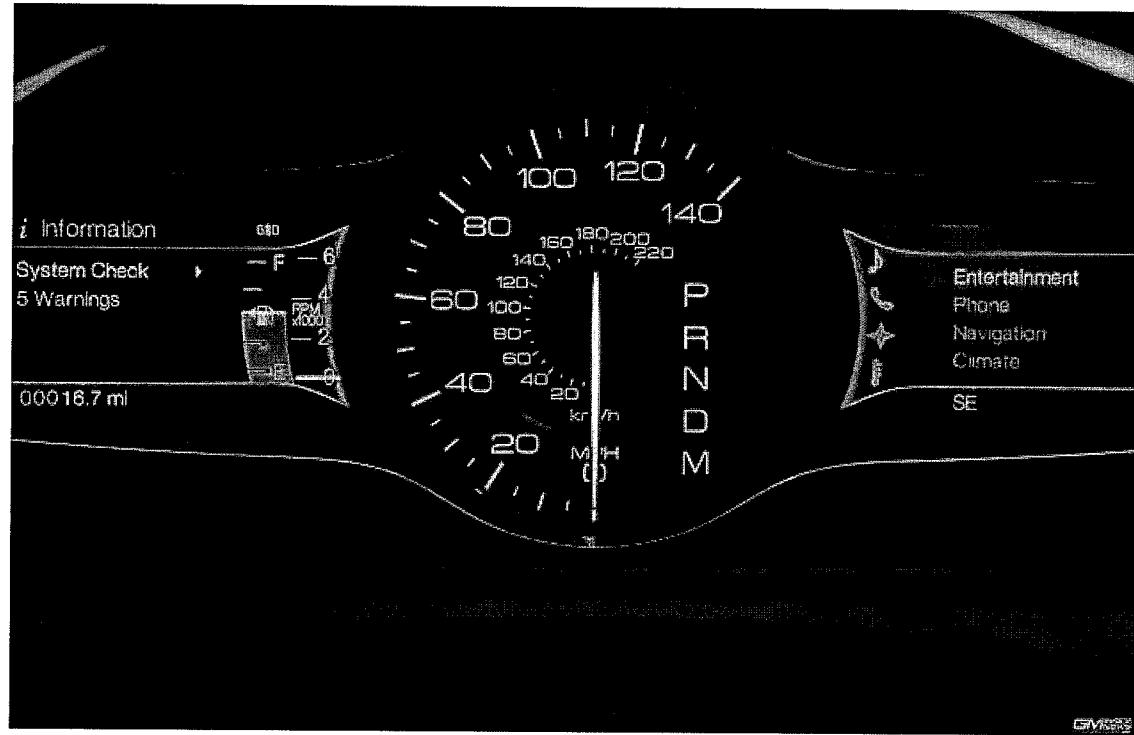
23. MyFord Touch consists of three visual interfaces. The first is an 8-inch LCD touchscreenthat is located in the center stack. The following photograph depicts the 8-inch LCD touchscreent located within the center stack:



24. As can be seen above, the eight-inch LCD touchscreent is divided into four equal sized sections. The upper left quarter of the screen is the interface which displays the

1 connection to a user's mobile device, and allows the user to operate a mobile device, including  
 2 making telephone calls, reviewing contact information on the user's mobile device, and other  
 3 features related to the mobile device. The lower left quarter of the screen operates the audio  
 4 system in the vehicle. It allows the user to access and select various radio stations, or other sources  
 5 of audio that can be played in the vehicle. The upper-right quarter of the screen permits the user to  
 6 interface with the vehicles' navigation and GPS technology. And finally, the bottom right quarter  
 7 of the screen is the interface with the vehicles' climate control system and allows the user to  
 8 control the climate in the car. There is also a menu screen, which allows the user to control various  
 9 aspects of the MyFord Touch system, as well as other features in the vehicle, including cabin  
 10 lighting, audio settings, and other aspects of the vehicle.

11 25. The other two LCD interfaces are located to the left and right of the speedometer  
 12 directly in front of the driver. The following depicts the additional two LCD interfaces:



25 26. These two additional interfaces are not touch screens. Rather, the user navigates  
 26 these through a five-way control located on the steering wheel. They allow the user to perform  
 27  
 28

1 some of the same functions that can be performed on the center stack interface, however, on a more  
 2 limited basis.

3 27. MyFord Touch is powered by “Ford SYNC,” a software program that is based on  
 4 Microsoft’s Windows Embedded Automotive operating system.<sup>10</sup> SYNC operates a number of  
 5 features that form part of the MyFord Touch system.

6 28. Ford charges a hefty premium for the MyFord Touch system. According to Ford’s  
 7 website, when pricing a vehicle that includes MyFord Touch, it adds a significant cost to the price  
 8 of the vehicle. Some sources have reported that as a stand-alone product, the cost of the product is  
 9 \$1000.<sup>11</sup>

10 **C. MyFord Touch Has Been Plagued with Serious Defects**

11 29. In theory, MyFord Touch possesses a number of attractive features, but since its  
 12 launch, MyFord Touch has failed to perform as advertised. Many of the features advertised as part  
 13 of the system often fail to perform.

14 30. In addition, while many of the features of MyFord Touch were designed to make the  
 15 driving experience safer for the vehicle owner, the persistent problems Class Vehicle owners  
 16 and/or lessees have experienced with MyFord Touch have actually created significant safety risks,  
 17 as the vehicle owners/lessees are forced to focus on the malfunction while driving or are distracted  
 18 by the malfunction, and because the MyFord Touch system loses the ability to contact 9-1-1 in  
 19 emergencies as designed.

20 31. For example, while using certain features in MyFord Touch, such as the GPS  
 21 navigation technology, the MyFord Touch screen will simply turn off, then turn back on and, when  
 22 it does, it states that it is “performing scheduled system maintenance,” and, in the meantime, the  
 23 user’s route that was programmed into the GPS is no longer available and can leave the vehicle  
 24 owner lost. Further, the system is not performing “scheduled” maintenance, it is simply  
 25 malfunctioning.

26  
 27 <sup>10</sup> <http://www.zdnet.com/blog/gadgetreviews/ford-announces-myford-touch-with-dual-4-2-lcds-wi-fi-and-improved-voice-recognition/10838>.

28 <sup>11</sup> [http://en.wikipedia.org/wiki/MyFord\\_Touch](http://en.wikipedia.org/wiki/MyFord_Touch).

1       32.    Additionally, because certain crucial vehicle functions, including the defroster and  
2 the rear-view camera, are routed through and controlled by MyFord Touch, these features become  
3 inoperable when the MyFord Touch system crashes. Thus, driving in winter becomes dangerous  
4 because the driver cannot defrost his or her windshield and other windows, and drivers are more  
5 likely to collide with other cars or pedestrians when moving in reverse because the rear-view  
6 camera fails.

7       33.    Since the launch of MyFord Touch, the system has been plagued with numerous  
8 issues, and has not performed the functions it was intended to perform. As further described  
9 below, Ford has attempted a series of corrective measures but, like the system itself, these  
10 measures have also been a failure.

11 **D.    The TSBs and Warranty Extension**

12       34.    As Ford became aware of the many MyFord Touch problems being experienced by  
13 Class Vehicle owners, Ford issued several Technical Service Bulletins (“TSB”) and updates in an  
14 effort to resolve them.

15       35.    On or about April 27, 2011, Ford issued TSB 11-4-18 pertaining to Ford vehicles  
16 equipped with MyFord Touch. Specifically, Ford’s TSB noted that these systems may experience  
17 blank screens, missing presets, lack of voice recognition, incorrect dialing of phone numbers and  
18 display problems with the backup camera. The TSB recommended reprogramming the software  
19 system.

20       36.    On or about July 22, 2011, Ford issued TSB 11-7-24 – a “succeed to” bulletin from  
21 11-4-18 – again pertaining to the functionality of Ford vehicles equipped with MyFord Touch.  
22 Specifically, this TSB explained that certain Class Vehicles, built on or before July 12, 2011, may  
23 experience various concerns with “blank/black display screen, radio switches from off to on or  
24 changes state after ending a phone call or voice command, phone pairing, incorrect Sirius channel  
25 selection using voice command, unable to download photo resolution 800x378, phonebook  
26 downloads, AM/FM missing preset display information, voice recognition, voice recognition when  
27 using SYNC services, USB device detection, travel link download time, Sirius channel art logo  
28 mismatch, clock intermittently displays incorrect time, traffic direction and information (TOI)

1 calling wrong phone number, travel link subscription, address book downloads, navigation set in  
2 kilometers but voice communicates in miles, and backup camera scrolling display.” As a result,  
3 Ford’s TSB recommended performing a software update by fully reprogramming the Accessory  
4 Protocol Interface Module (“APIM”), and, where reprogramming was unsuccessful, replacing the  
5 APIM.

6 37. On or about March 6, 2012, Ford issued Customer Satisfaction Program Campaign  
7 12M01 pertaining to Ford vehicles equipped with the MyFord Touch system. This Campaign  
8 explained that certain MY 2011-2012 Explorer, Edge, MKX and MY 2012 Focus vehicles  
9 equipped with MyFord Touch may require replacement of the APIM, the brain of the MyFord  
10 Touch system. Ford’s 12M01 Campaign extended warranty coverage of the APIM to four years of  
11 service from the warranty start date on Ford vehicles and five years on Lincoln vehicles, regardless  
12 of mileage.

13 38. On or about November 5, 2012, Ford issued TSB 12-11-1 due to concerns with  
14 “navigation, voice recognition, call sound quality, phone pairing and/or system performance” in the  
15 following Class Vehicles:

16 • 2011-2013 Edge, MKX and Explorer  
17 • 2012-2013 Focus  
18 • 2013 MKT, Taurus, MKS, Fusion, Escape, Flex and F-150

19 39. As a result, Ford’s TSB provided steps for a full software update of the APIM to the  
20 latest software version now available, version V3.5.1. Those Class Vehicles equipped with  
21 navigation required a new A4 level SD-card for proper navigation function.

22 40. On or about November 8, 2012, Ford issued Campaign  
23 “DEMONSTRATION/DELIVERY HOLD Application Performance Upgrade 11A01” because  
24 software was released to “improve overall system functionality, voice recognition, screen refresh  
25 rates, response to touch, and to simplify screens for ease of use” due to concerns with “navigation,  
26 voice recognition, call sound quality, phone pairing and/or system performance.” As a result, a  
27 “full image reprogram of the APIM” was to be completed on the following Class vehicles:  
28

1.     • 2011 Explorer
2.     • 2011-2012 Edge, MKX
3.     • 2012 Focus

4.     41.    As a result, Ford's TSB provided steps for a full software update of the APIM to the  
5.    latest software version now available, version V3.5.1. Those Class Vehicles equipped with  
6.    navigation required a new A4 level SD-card for proper navigation function.

7.     42.    On or about November 15, 2012, Ford issued TSB 12-11-2 because certain vehicles  
8.    equipped with MyFord Touch, built on or before May 14, 2012, exhibited "a voice prompt  
9.    indicating SYNC's Service's Traffic, Directions or Information (TDI) is unable to locate the  
10.   vehicle or a Global Position System (GPS) issue is present." As a result, Ford instructed that  
11.   technicians perform a reprogram of the Global Position Satellite Module (GPSM) on the following  
12.   Class vehicles:

13.     • 2010-2011 Fiesta, Focus, Mustang
14.     • 2010-2012 Fusion Taurus
15.     • 2010 Explorer Sport Trac
16.     • 2010-2011 Explorer
17.     • 2010-2012 E-Series, Edge, Escape, Expedition, F-150, F-Super Duty, Flex
18.     • 2010-2012 MKS, MKZ
19.     • 2010-2011 MKX
20.     • 2010-2012 Navigator
21.     • 2010 Milan, Mountaineer
22.     • 2010-2011 Mariner
23.     • 2011-2012 Edge, MKX
24.     • 2012 Focus

25.     43.    On or about January 14, 2013, Ford issued Campaign  
26.    "DEMONSTRATION/DELIVERY HOLD Application Performance Upgrade 12A04" because  
27.    software was released to "improve overall system functionality and performance including  
28.    navigation, voice recognition, call sound quality, and phone Tiring." As a result, and due to new

1 software, Dealers were instructed “to inspect the APIM software level and if necessary, reprogram  
2 the Accessory Protocol Interface Module ....” If the system was unresponsive, inoperative, or if  
3 the vehicle software update was unsuccessful, Dealers were instructed to replace the APIM in the  
4 following Class vehicles:

5       • 2011 Edge, Explorer, MKX  
6       • 2012 Edge, Explorer, MKX, Focus  
7       • 2013 Edge, Explorer, MKX, Focus, Escape, Flex, Fusion, Taurus, MKS, MKT, F-  
8       150

9       44. A Ford “Special Service Message” dated March 29, 2013 states:

10       **32162 2011-2013 Vehicles MyTouch Functional Issues Due to  
11       Phonebook Content Contact Volume.**

12       Some MyTouch equipped vehicles may experience multiple  
13       functional issues such as slow navigation calculations, displayed  
14       time jump or audio popping during initial ignition on cycle.

15       These conditions can be created by the size of the contact list  
16       within the customer’s phone book. The amount of data within the  
17       contact list can create a processing problem for the module during  
18       a key on cycle. This can be resolved by limiting the number  
19       and/or content within the contact list. In addition, the automatic  
20       phonebook download feature can be set to off by selecting phone,  
21       settings, manage phone book, turn auto phone book off.

22       Additional phone contacts can be added by manually re-  
23       downloading phone book in that same menu. Recommend  
24       following Workshop Manual section 415-00 for additional  
25       diagnostics and ensure a master reset is performed. **EFFECTIVE**

26       **DATE: 29-MARCH-2013.**

27       45. On June 17, 2013, Ford issued a press release titled “SYNC and MyFord Touch  
28       Sold on 79 Percent of New Ford Vehicles, New Technology Drives Quality Satisfaction.” Ford

1 announced that combined, MyFord Touch systems are sold on 79 percent of new 2013 Ford  
2 vehicles. According to Ford, customers cite to these features as “top purchase drivers much more  
3 often than competitors.” Despite touting the successes of MyFord Touch systems, Ford  
4 contradicted that position by stating the “F-150 blends touch screen capability with traditional  
5 buttons and knobs, *a similar balance planned for future Ford vehicles.*” (Emphasis added.) Ford  
6 also explained that it intends to release “another downloadable upgrade planned for this summer”  
7 in an attempt to further correct the MyFord Touch systems.

8 **E. Similar Experiences and Complaints by Consumers**

9 46. Plaintiff's experiences are by no means isolated or outlying occurrences. Indeed,  
10 the internet is replete with examples of blogs and other websites where consumers have  
11 complained of the exact same defect within the Class Vehicles.

12 47. For example, a website titled “syncsucks.com” lists the following “most common  
13 Sync/MyFord Touch issues” all of which are symptoms of the same defective APIM.

- 14 • Screen goes black and won't come back on
- 15 • Back-up camera goes black without warning while backing up
- 16 • Sync system restarts without warning while driving
- 17 • Sync system freezes up completely even after the vehicle is turned off
- 18 • Says phone connected, yet voice says no phone connected when asking to  
19 dial number
- 20 • Displays phone is connected, yet after repeated efforts it will not respond to  
21 ANY voice command
- 22 • Music randomly starts playing while using the phone
- 23 • Randomly jumps from audio source to audio source
- 24 • Keeps disconnecting USB iPod
- 25 • Will not recognize multiple brand-new USB jump drives

1. • Never really got to enjoy my six months of satellite radio as Sync said I had  
 2 no subscription forcing me to call Sirius multiple times to try and sort that  
 out.<sup>12</sup>

3 48. Another website called <http://fordsyncproblems.com/> was created by a consumer in  
 4 response to "Ford's inability to resolve issues with my newly purchased 2012 Ford Escape." This  
 5 person claims that "When making a phone call through the Sync system I can hear the phone  
 6 conversation clearly through the car speakers BUT the person on the other end of the conversation  
 7 cannot hear me clearly; it either sounds like I am in a tunnel or it is very choppy. The quality of  
 8 the conversation gets worse as your speed increases."<sup>13</sup> There are several other similar websites.<sup>14</sup>

9 49. Likewise, the database maintained by the National Highway Traffic Safety  
 10 Administration contains several similar complaints by consumers, some of which are set forth  
 11 below:

12 **Date Complaint Filed:** 7/8/2013

13 **Date of Incident:** 7/7/2013

14 **NHTSA ID Number:** 10523680

15 **Manufacturer:** Ford Motor Company

16 **Vehicle Identification Number:** Not Available

17 **SUMMARY:**

18 DEAR NHTSA, I HAVE RECENTLY PURCHASED A FORD EXPLORER LIMITED 2013  
 19 MODEL ABOUT 3 MONTHS AGO. SINCE I HAVE PURCHASED THIS VEHICLE I HAVE  
 20 NOTICED THAT THE MYTOUCH SYSTEM HAS CONSTANT GLITCHES AND CAUSING  
 21 DISTRACTIONS WHILE DRIVING. YESTERDAY I STARTED THE VEHICLE AND THE  
 22 ENTIRE SCREEN WAS OUT INCLUDING THE BACKUP SENSORS AND CAMERA. I  
 23 HAVE CONTACTED FORD AND THE DEALERSHIP BUT THEY DO NOT SEEM TO BE  
 24 VERY RESPONSIVE. I WILL BE TAKING THIS VEHICLE TO THE DEALERSHIP  
 25 TOMORROW HOWEVER I FIND THIS TO BE A SAFETY ISSUE AS MY WIFE RELIES ON  
 26 THE CAMERA AND SENSORS WHEN PARKING A VEHICLE.

27 **Date Complaint Filed:** 4/10/2013

28 **Date of Incident:** 4/9/2013

**NHTSA ID Number:** 10505787

**Manufacturer:** Ford Motor Company

**Vehicle Identification Number:** 2LMDJ6JK0DB...

**SUMMARY:**

WHILE DRIVING ON THE HIGHWAY AT ABOUT 65MPH, THE SYNC SYSTEM SCREEN  
 WENT BLACK, AFTER ABOUT 5 MINUTES, THE SYSTEM CAME BACK UP. I WAS  
 UTILIZING THE NAVIGATION SYSTEM AT THE TIME AND WAS FORCED TO STOP,

<sup>12</sup> <http://www.syncsucks.com/>.

<sup>13</sup> <http://fordsyncproblems.com/5001.html>.

<sup>14</sup> See <http://www.fordfusionclub.com/showthread.php?t=413068>; <http://www.focusfanatics.com/forum/showthread.php?t=260838>; <http://jalopnik.com/gm-hasnt-really-found-that-new-thing-yet-for-ford-its-485829232>.

1 RE-ENTER THE DETAILS OF THE LOCATION I WAS INTENDED TO VISIT. THE SYNC  
 2 SYSTEM SHOULD NEVER JUST RESTART ITSELF WITHOUT WARNING A DRIVER. I  
 3 AM CONCERNED THERE IS A MORE SEVERE PROBLEM WITH THE MAIN CONTROL  
 4 SYSTEM WITH THIS PARTICULAR VEHICLE AS THREE OTHER ISSUES HAPPENED  
 5 WITHIN A WEEK OF EACH OTHER. 1. BLIB MODULE (BLIND SPOT AND CROSS  
 TRAFFIC SENSORS FAULTED AND NEEDED REPLACEMENT) 2. SYNC SYSTEM  
 REBOOTS ITSELF WHILE DRIVING AND ULTIZING NAVIGATION 3. LOW PRESSURE  
 ERROR POPS UP, STEERING BECOMES IMPOSSIBLE, ACCELERATION DIES, AND  
 BRAKING SLUGGISH. CAR REQUIRED SHUTDOWN AND RESTART TO RESOLVE. \*TR

6 **Date Complaint Filed:** 1/19/2013

7 **Date of Incident:** 7/11/2012

8 **NHTSA ID Number:** 10493496

9 **Manufacturer:** Ford Motor Company

10 **Vehicle Identification Number:** 1FMCU9H99...

11 **SUMMARY:**

12 THE MYFORDTOUCH SYSTEM WITH NAVIGATION IS UNSAFE. DUE TO CONTINUOUS  
 13 SOFTWARE AND HARDWARE ERRORS, THE LARGE VIDEO SCREEN IS DISTRACTING  
 TO THE DRIVER. PHONE DOES NOT SYNC FROM TIME TO TIME, NAVIGATION DOES  
 NOT ACQUIRE GPS SIGNAL OR VEHICLE POSITION IS INCORRECT. MANY PROBLEMS  
 WITH BLUETOOTH AND USB INTEGRATION, TOO MANY TO LIST HERE. WHEN  
 14 GLITCHES OCCUR, THE SCREEN OFTEN GOES COMPLETELY BLANK, SHOWING  
 NOTHING AT ALL. I HAVE HAD MY ESCAPE IN FOR SERVICE THREE TIMES FOR  
 THESE PROBLEMS. MY SPOUSE COMPLAINS WHEN SHE RIDES IN THE CAR THAT I  
 AM DISTRACTED BY CONTINUOUS ERRORS OF THE MFT DISPLAY. PROBLEMS WITH  
 MFT SYSTEM HAVE ALSO BEEN NOTED BY CONSUMER REPORTS. I WILL TAKE  
 ADVANTAGE OF THE LEMON LAW TO CORRECT THIS UNSAFE SITUATION WITH MY  
 VEHICLE. \*TR

15 **Date Complaint Filed:** 12/6/2012

16 **Date of Incident:** 12/3/2012

17 **NHTSA ID Number:** 10488263

18 **Manufacturer:** Ford Motor Company

19 **Vehicle Identification Number:** Not Available

20 **SUMMARY:**

21 2011 FORD EXPLORER. CONSUMER WRITES IN REGARDS TO ISSUES WITH A "MY  
 22 FORD TOUCH" VOICE ACTIVATED SYSTEM. \*TGW THE CONSUMER STATED THE  
 23 "MY FORD TOUCH" IS A VOICE OR TOUCH SCREEN ACTIVATED SYSTEM THAT  
 CONTROLLED ENTERTAINMENT, CLIMATE, NAVIGATION AND HANDS FREE CELL  
 24 PHONE FUNCTIONS. WHEN THE SYSTEM STOPPED WORKING, THERE WAS NO  
 CONTROL OVER ANY OF THE AFOREMENTIONED DEVICES. THE CONSUMER HAD  
 TO TAKE THE VEHICLE TO THE DEALER THREE TIMES, BECAUSE OF THE  
 25 MALFUNCTIONING SYSTEM. A TYPICAL PROBLEM WAS THE SYSTEM LOCKING UP,  
 THE SCREEN WOULD FREEZE AND THERE WAS NO CONTROL OVER THE  
 HEATER/AIR CONDITIONER OR RADIO VOLUME. USUALLY AFTER 10-12 MINUTES  
 26 THE SCREEN WOULD GO BLANK AND A MESSAGE APPEARED THAT READ  
 PERFORMING SCHEDULE MAINTENANCE. WHEN THE SYSTEM WAS FINALLY  
 RESTORED, EVERYTHING WORKED AGAIN. SOMETIMES WHEN USING THE  
 NAVIGATION TO FIND AN ADDRESS, THE CAR ICON WOULD WANDER OFF THE  
 PRESCRIBED ROUTE EVEN THOUGH THE CONSUMER WAS DRIVING THE  
 27 PRESCRIBED ROUTE. WHEN THAT HAPPENED, THE SCREEN WOULD OFTEN  
 DISPLAY A LARGE YELLOW QUESTION MARK. THE FIRST TIME THE CONSUMER  
 VISITED THE DEALER, THEY FLASHED THE MEMORY. IT HELPED, BUT IT STILL  
 FAILED, AT TIMES. THE SECOND TIME, HE RETURNED TO THE DEALER, THEY  
 28 INSTALLED AN UPDATED PROGRAM FROM FORD THAT WAS SUPPOSED TO

1. CORRECT THE PROBLEMS. BUT, AS TIME WENT ON, THE NEW PROGRAM STARTED  
 2. TO FAIL IN A SIMILAR WAY AS THE OLD PROGRAM. THE LAST TIME, THE  
 3. CONSUMER VISITED THE DEALER, THEY DID A MASTER RESET BY DISCONNECTING  
 4. THE BATTERY, THEREBY REMOVING ALL POWER FROM THE SYSTEM AND  
 5. REBOOTING IT WHEN THE BATTERY WAS RECONNECTED. THE DEALER INFORMED  
 6. THE CONSUMER, HE COULD ALSO PULL FUSE 29 AND PUT IT BACK IN AGAIN.  
 7. HOWEVER, THE CONSUMER STATED HE WAS NOT ABLE TO REACH THE FUSE, AS IT  
 8. WAS TUCKED WAY UP UNDER THE DASHBOARD, BUT EVEN IF HE COULD REACH  
 9. IT, IT WOULDN'T FIX THE DEFECTIVE SOFTWARE PROVIDED BY FORD AND  
 10. MICROSOFT. DISCONNECTING THE BATTERY DIDN'T FIX THE PROBLEM, IT ONLY  
 11. REBOOTED THE COMPUTER AND EVENTUALLY, THE PROBLEM WOULD RETURN.  
 12. \*JB

13. **Date Complaint Filed:** 11/6/2012

14. **Date of Incident:** 9/4/2012

15. **NHTSA ID Number:** 10483516

16. **Manufacturer:** Ford Motor Company

17. **Vehicle Identification Number:** 1FMCU0H9XDU...

18. **SUMMARY:**

19. TL\* THE CONTACT OWNS A 2013 FORD ESCAPE. THE CONTACT STATED THAT THE  
 20. MYTOUCH SYSTEM FAILED AND WOULD NOT ALLOW HER TO MAKE A CALL. IN  
 21. ADDITION, THE MYTOUCH SYSTEM WOULD NOT PROPERLY RESPOND TO  
 22. COMMANDS. THE VEHICLE WAS TAKEN TO THE DEALER FOR TESTING ON  
 23. SEVERAL OCCASIONS WHERE THE DEALER ADVISED THAT THE MYTOUCH CHIP  
 24. NEEDED TO BE REPLACED. THE MANUFACTURER WAS MADE AWARE OF THE  
 25. FAILURE AND ADVISED THE CONTACT THAT SOMEONE WOULD CALL THE  
 26. CONTACT AT A LATER DATE. THE VEHICLE WAS NOT REPAIRED. THE  
 27. APPROXIMATE FAILURE MILEAGE WAS 22,083.

28. **Date Complaint Filed:** 10/31/2012

1. **Date of Incident:** 6/15/2011

2. **NHTSA ID Number:** 10482741

3. **Manufacturer:** Ford Motor Company

4. **Vehicle Identification Number:** 2FMDK4KC9BB...

5. **SUMMARY:**

6. TL\* THE CONTACT OWNS A 2011 FORD EDGE. THE CONTACT STATED THAT WHILE  
 7. PARKED THE CONTACT NOTICED THE SYNC TECHNOLOGY ON THE TOUCH SCREEN  
 8. WAS NOT FUNCTIONING PROPERLY AFFECTING THE AIR CONDITIONER, RADIO,  
 9. CELL PHONE SYNC, AND NAVIGATION SYSTEM. THE CONTACT STATED HE WAS  
 10. CONSTANTLY DISTRACTED AND LOOKING AWAY FROM THE ROAD TO CANCEL OR  
 11. SWITCH FUNCTIONS ON THE SCREEN. THE VEHICLE WAS TAKEN TO THE DEALER  
 12. FOR DIAGNOSTIC TESTING FOURTEEN DIFFERENT TIMES. THE TECHNICIAN  
 13. PERFORMED VARIOUS SOFTWARE UPDATES AND REPLACED THE COMPUTER  
 14. THREE DIFFERENT TIMES BUT THE FAILURE CONTINUED. THE VEHICLE WAS NOT  
 15. REPAIRED. THE APPROXIMATE FAILURE MILEAGE WAS 200.

16. **Date Complaint Filed:** 9/25/2012

17. **Date of Incident:** 7/25/2012

18. **NHTSA ID Number:** 10477022

19. **Manufacturer:** Ford Motor Company

20. **Vehicle Identification Number:** 1FMCU0H93DU...

21. **SUMMARY:**

22. NUMEROUS FAULTS WITH RADIO AND NAVIGATION SYSTEM PART OF  
 23. MYFORDTOUCH SYSTEM. THE RADIO WILL COME ON BY ITSELF AND WILL NOT  
 24. SHUT OFF. THIS USUALLY OCCURS WHEN A CELL PHONE IS IN USE AND CONNECTS

1 OR DISCONNECTS VIA BLUETOOTH WHEN THE CAR IS STARTED OR TURNED OFF.  
2 WHEN THIS FAULT OCCURS THE RADIO WILL NOT ALLOW DIFFERENT STATIONS  
3 TO BE SELECTED. THE RADIO WILL NOT TURN OFF EVEN AFTER THE ENGINE IS  
4 TURNED OFF AND THE DOORS ARE OPENED. THE POWER BUTTON FOR THE RADIO  
5 WILL NOT FUNCTION TO SHUT OFF THE RADIO AT THESE TIMES. THE RADIO WILL  
6 REMAIN ON FOR APPROXIMATELY 20 MINUTES AFTER THE VEHICLE IS SHUT OFF  
7 AND THE ALARM IS TURNED ON. THE DEALER HAS ACKNOWLEDGED THIS  
8 PROBLEM EXISTS WITH SIMILAR VEHICLES AND HAS STATED THAT A REPAIR  
9 DOES NOT EXIST. THE NAVIGATION SYSTEM IS SLOW TO RESPOND AND AT TIMES  
10 CANNOT PROPERLY LOCATE THE VEHICLE. THE NAVIGATION SYSTEM ALSO HAS  
11 FAULTED BY NOT ALLOWING MANUAL ENTRY OF ADDRESSES OR SELECTION OF  
12 SAVED DESTINATIONS. THE DEALER HAS ACKNOWLEDGED A REPAIR FOR THIS  
13 DOES NOT EXIST OTHER THAN TO DISCONNECT THE BATTERY TERMINALS FOR AT  
14 LEAST 10 MINUTES. \*TR

15 **Date Complaint Filed:** 8/9/2012

16 **Date of Incident:** 8/26/2011

17 **NHTSA ID Number:** 10469990

18 **Manufacturer:** Ford Motor Company

19 **Vehicle Identification Number:** 1FMHK7D81BG...

20 **SUMMARY:**

21 FORD "MYFORDTOUCH" SYSTEM HAS FAILED ON NUMEROUS OCCASIONS. IT HAS  
22 FROZEN, LOCKED UP, AND CONTINUOUSLY REBOOTED. WHEN THIS OCCURS, YOU  
23 LOSE ALL FUNCTIONALITY AND ABILITY TO CHANGE RADIO STATIONS, ADJUST  
24 CLIMATE CONTROL, USE NAVIGATION, HANDS FREE FUNCTIONS, ETC. WHILE  
25 THERE IS SOME MANUAL CONTROLS FOR BASIC OPERATIONS, IT DOES NOT ALLOW  
FULL CONTROL OF TALL SYSTEMS. FOR INSTANCE, WHEN THE MFT SYSTEM FAILS,  
YOU HAVE NO ABILITY TO TURN ON OR ADJUST THE REAR CLIMATE CONTROLS  
FOR REAR PASSENGERS. DEALER HAS TRIED UPGRADING SOFTWARE, RESETTING  
SOFTWARE, REINSTALLING SOFTWARE, AND REPLACING HARDWARE. WHILE THE  
PROBLEM IS NOT AS BAD AS IT HAS BEEN, IT CONTINUES WITH NO RESOLVE. \*TR

26 **Date Complaint Filed:** 6/1/2011

27 **Date of Incident:** 4/5/2011

28 **NHTSA ID Number:** 10404872

**Manufacturer:** Ford Motor Company

**Vehicle Identification Number:** 2LMDJ6JK5BB...

**SUMMARY:**

29 WHEN DRIVING DOWN THE HIGHWAY, THE SYNC SCREEN GOES COMPLETELY  
30 BLANK. AT THIS POINT I HAVE NO ACCESS TO HEAT, A/C, DEFROSTER, RADIO, OR  
31 BACKUP CAMERA. ON OCCASION THE SCREEN HAS BEEN BLANK FOR UP TO ONE  
32 HUNDRED MILES. I DON'T WORRY ABOUT THE DEFROSTER IN THE SUMMER BUT IN  
33 THE WINTER THIS IS A DEFINITE SAFETY CONCERN. NOT HAVING THE BACKUP  
34 CAMERA IS RISKY FOR THERE MAY BE SMALL CHILDREN BEHIND THE VEHICLE.  
35 I'VE BEEN IN CONTACT WITH FORD MOTOR COMPANY. THEY TELL ME THERE  
36 ENGINEERING DEPARTMENT IS WORKING ON A FIX BUT THERE IS NO ETA NOR DO  
37 THEY HAVE ANY IDEA WHEN OR IF THEY CAN FIX IT. THE CONSUMER WANTED TO  
38 INCLUDE THE FILE NUMBER ASSIGNED TO HER BY FORD MOTOR COMPANY.  
39 COMPLAINT # 441951441

40 **Date Complaint Filed:** 12/15/2010

41 **Date of Incident:** 12/10/2010

42 **NHTSA ID Number:** 10370847

43 **Manufacturer:** Ford Motor Company

44 **Vehicle Identification Number:** 2FMDK3JC0BB...

**SUMMARY:**

SYNC/MY TOUCH CONSOLE ON 2011 FORD EDGE LOCKS UP OR GOES DEAD. THERE IS NO WAY TO ACTIVATE THE WINDSHIELD DEFROST WITHOUT THE TOUCH SCREEN. DEALERSHIP SERVICE DEPARTMENT HAS BEEN UNABLE TO UNLOCK SCREENS. THIS PROBLEM HAS BEEN WIDELY REPORTED ON OWNERS WEBSITE FOR THE 2011 EDGES, BUT FORD DOES NOT SEEM TO HAVE A FIX FOR IT. IT IS WINTER AND I NEED TO RUN DEFROST. \*TR

**Date Complaint Filed:** 11/15/2010

**Date of Incident:** 10/20/2010

**NHTSA ID Number:** 10365783

**Manufacturer:** Ford Motor Company

**Vehicle Identification Number:** 2FMDK4KC9BB...

**SUMMARY:**

THIS IS A PREEMPTIVE COMPLAINT, AS I THANKFULLY HAVE NOT HAD AN ACCIDENT YET. THE MYFORDTOUCH SYSTEM IN ALL 2011 FORD MOTOR CO VEHICLES ARE DEFECTIVE. THE SYSTEM HAS A MULTITUDE OF DEFECTS, BUT THE SAFETY RELATED DEFECT IS THAT THE SYSTEM CAN SPONTANEOUSLY REBOOT AT ANY TIME WITH NO WARNING TO THE DRIVER. THIS CAN HAPPEN AT RANDOM, AND MULTIPLE TIMES WITHIN A SHORT PERIOD OF TIME. WHEN BACKING UP THIS SHUTS DOWN THE BACKUP CAMERA WHICH COULD RESULT IN INJURIES TO CHILDREN WHO GET BEHIND THE VEHICLE. AT NIGHT THIS CAUSES THE SCREEN TO SUDDENLY GO FULL WHITE AT FULL BACKLIGHT, WHICH IS EXTREMELY DISTRACTING TO A DRIVER AT NIGHT. ANOTHER SAFETY ISSUE WOULD BE WHEN THE SYSTEM REBOOTS WHEN THE DRIVE IS BEING GUIDED TO AN EMERGENCY FACILITY OR IS ON THE PHONE WITH 911. FORD ACKNOWLEDGED THE PROBLEMS TO DEALERSHIPS ON OCT 20TH AND INFORMED THEM NOT TO DO ANYTHING AT THIS TIME. MANY CUSTOMERS HAVE BEEN REPORTING THESE PROBLEMS ON THE OWNER2OWNER WEBSITE FOR THE FORD SYNC SYSTEM. I AM SUBMITTING THIS COMPLAINT IN HOPES IT CAN BE DEALT WITH BEFORE SOMEONE GETS HURT RATHER THAN AFTER. THANK YOU \*TR

**Date Complaint Filed:** 10/28/2010

**Date of Incident:** 9/27/2010

**NHTSA ID Number:** 10362842

**Manufacturer:** Ford Motor Company

**Vehicle Identification Number:** 2LMDJ8JK8BB...

**SUMMARY:**

THE SIRIUS TRAVEL LINK (THRU MYLINCOLN TOUCH) DOES NOT WORK AND HAS NOT WORKED FROM DAY 1 OF PICKING UP THE SUV ON 9/27/10. AT FIRST LINCOLN WOULD NOT ADMIT ANY ISSUES BUT NOW THEY FINALLY DO BUT DO NOT SAY WHEN A FIX WILL BE AVAILABLE. I SHOULD HAVE BEEN TOLD THAT OPTION WAS NOT WORKING BEFORE THEY HAD ME SIGN A LEASE FOR THE CAR. ALOT OF US ARE PAYING FOR SOMETHING THAT DOES NOT WORK AND DO NOT KNOW IF IT EVER WILL. \*TR

#### **F. Fallout From the MyFord Touch Problems**

50. After many years of steady improvement in its reputation for quality, as a direct result of the problems associated with MyFord Touch, Ford's standing among consumers and consumer reporting organizations plummeted following the launch of the system. For example, J.D. Power & Associates' "Initial Quality Study" examines vehicles during the first 90 days of

1 ownership.<sup>15</sup> In 2010, the last year before rolling out the MyFord Touch system, Ford placed fifth  
 2 on J.D. Power & Associates' Initial Quality Study.<sup>16</sup> In 2011, after the rollout, Ford plummeted to  
 3 23rd place in the same survey.<sup>17</sup> In 2010, Lincoln was ranked eighth in the same survey.<sup>18</sup> In  
 4 2011, it plummeted to 17th place.<sup>19</sup>

5 51. J.D. Power & Associates Vice President stated that the primary driver in Ford's  
 6 descent was the MyFord Touch system.<sup>20</sup>

7 52. So rampant are the problems, Consumer Reports recommends that *no* consumer  
 8 purchase Ford vehicles that are equipped with MyFord Touch.<sup>21</sup>

9 53. Ford marketed, distributed, and sold the Class Vehicles with the MyFord Touch in  
 10 the State of California, as well as nationwide.

11 54. Ford knew or, at a minimum, should have known at the time it began to advertise  
 12 and sell and/or lease the Class Vehicles that MyFord Touch contained serious latent design,  
 13 manufacturing, and/or assembly defects that cause the MyFord Touch system to persistently  
 14 malfunction.

15 55. Plaintiff believes that due to these defects, the MyFord Touch is defective and is not  
 16 fit for its intended purposes.

17 56. The defect has or will cost Plaintiff and the other Class members' money in repair  
 18 costs and has resulted in extended periods of time when Plaintiff and the other Class members are  
 19 without their vehicles, or are deprived of the full use of their vehicles.

20 15 <http://wheels.blogs.nytimes.com/2011/06/23/aggravating-myford-touch-sends-ford-plummeting-in-j-d-power-quality-survey/?hpw>.

21 16 <http://wheels.blogs.nytimes.com/2011/06/23/aggravating-myford-touch-sends-ford-plummeting-in-j-d-power-quality-survey/?hpw>.

22 17 <http://wheels.blogs.nytimes.com/2011/06/23/aggravating-myford-touch-sends-ford-plummeting-in-j-d-power-quality-survey/?hpw>.

23 18 <http://wheels.blogs.nytimes.com/2011/06/23/aggravating-myford-touch-sends-ford-plummeting-in-j-d-power-quality-survey/?hpw>.

24 19 <http://wheels.blogs.nytimes.com/2011/06/23/aggravating-myford-touch-sends-ford-plummeting-in-j-d-power-quality-survey/?hpw>.

25 20 <http://wheels.blogs.nytimes.com/2011/06/23/aggravating-myford-touch-sends-ford-plummeting-in-j-d-power-quality-survey/?hpw>.

26 21 [http://en.wikipedia.org/wiki/MyFord\\_Touch#cite\\_note-16](http://en.wikipedia.org/wiki/MyFord_Touch#cite_note-16).

57. The defect has diminished the value of the Class Vehicles. The Class Vehicles were worth less than Plaintiff and the other Class members paid for them. A vehicle containing the defects described herein is worth less than a vehicle free of such defects.

## VI. CLASS ALLEGATIONS

58. Plaintiff brings this action on behalf of itself and as a class action, pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following classes:

All persons or entities in the United States who are current or former owners and/or lessees of a Class Vehicle (the “Nationwide Class”).

All persons or entities who purchased or leased a Class Vehicle in the State of California (the “California Class”).

All persons or entities who purchased or leased a Class Vehicle in the State of Iowa (the "Iowa Class").

(collectively, the “Class,” unless otherwise noted).

59. Excluded from the Class are individuals who have personal injury claims resulting from the defect in the MyFord Touch system. Also excluded from the Class are Ford and its subsidiaries and affiliates; all persons who make a timely election to be excluded from the Class; governmental entities; and the judge to whom this case is assigned and his/her immediate family. Plaintiff reserves the right to revise the Class definition based upon information learned through discovery.

60. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of his claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claim.

61. This action has been brought and may be properly maintained on behalf of each of the Classes proposed herein under Federal Rule of Civil Procedure 23.

62. **Numerosity. Federal Rule of Civil Procedure 23(a)(1):** The members of the Class are so numerous and geographically dispersed that individual joinder of all Class members is impracticable. While Plaintiff is informed and believes that there are not less than tens of thousands of members of the Class, the precise number of Class members is unknown to Plaintiff,

1 but may be ascertained from Ford's books and records. Class members may be notified of the  
2 pendency of this action by recognized, Court-approved notice dissemination methods, which may  
3 include U.S. mail, electronic mail, Internet postings, and/or published notice.

4       63.    **Commonality and Predominance: – Federal Rule of Civil Procedure 23(a)(2)**  
5   **and 23(b)(3):** This action involves common questions of law and fact, which predominate over  
6 any questions affecting individual Class members, including, without limitation:

- 7           a)    Whether Ford engaged in the conduct alleged herein;
- 8           b)    Whether Ford designed, advertised, marketed, distributed, leased, sold, or  
9               otherwise placed Class Vehicles into the stream of commerce in the United  
10              States;
- 11           c)    Whether the MyFord Touch system in the Class Vehicles contains a defect;
- 12           d)    Whether such defect causes the MyFord Touch system in the Class Vehicles  
13              to malfunction;
- 14           e)    Whether Ford knew about the defects, and, if so, how long Ford has known  
15              of the Defect;
- 16           f)    Whether Ford designed, manufactured, marketed, and distributed Class  
17              Vehicles with a defective MyFord Touch system;
- 18           g)    Whether Ford's conduct violates consumer protection statutes, warranty  
19              laws, and other laws as asserted herein;
- 20           h)    Whether Ford knew or should have known that the defects that existed with  
21              regard to the MyFord Touch system would lead to the malfunctions  
22              experienced with respect to the Class Vehicles;
- 23           i)    Whether Ford knew or reasonably should have known of the MyFord Touch  
24              defects in the Class Vehicles before it sold or leased them to Class members;
- 25           j)    Whether Plaintiff and the other Class members overpaid for their Class  
26              Vehicles as a result of the defects alleged herein;
- 27           k)    Whether Plaintiff and the other Class members are entitled to equitable  
28              relief, including, but not limited to, restitution or injunctive relief; and

1) Whether Plaintiff and the other Class members are entitled to damages and  
other monetary relief and, if so, in what amount.

64. **Typicality: Federal Rule of Civil Procedure 23(a)(3):** Plaintiff's claims are typical of the other Class members' claims because, among other things, all Class members were comparably injured through Ford's wrongful conduct as described above.

65. **Adequacy: Federal Rule of Civil Procedure 23(a)(4):** Plaintiff is an adequate Class representative because his interests do not conflict with the interests of the other members of the Class he seeks to represent; Plaintiff has retained counsel competent and experienced in complex class action litigation; and Plaintiff intends to prosecute this action vigorously. The Classes' interests will be fairly and adequately protected by Plaintiff and his counsel.

66. **Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2):** Ford has acted or refused to act on grounds generally applicable to Plaintiff and the other members of the Class, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the Class members as a whole.

67. **Superiority: Federal Rule of Civil Procedure 23(b)(3):** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiff and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Ford, so it would be impracticable for Nationwide and California Class members to individually seek redress for Ford's wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

1. **VII. CLAIMS FOR RELIEF**

2. **A. Claims Brought on Behalf of the Nationwide Class**

3. **COUNT I**

4. **(VIOLATION OF MAGNUSON-MOSS WARRANTY ACT)**

5. 68. Plaintiff incorporates by reference all allegations of Paragraphs 1-71 as though fully  
6. set forth herein.

7. 69. Plaintiff brings this Count on behalf of the Nationwide Class.

8. 70. Plaintiff is a "consumer" within the meaning of the Magnuson-Moss Warranty Act,  
9. 15 U.S.C. § 2301(3).

10. 71. Ford is a "supplier" and "warrantor" within the meaning of the Magnuson-Moss  
11. Warranty Act, 15 U.S.C. § 2301(4)-(5).

12. 72. The Class Vehicles are "consumer products" within the meaning of the Magnuson-  
13. Moss Warranty Act, 15 U.S.C. § 2301(1).

14. 73. 15 U.S.C. § 2301(d)(1) provides a cause of action for any consumer who is  
15. damaged by the failure of a warrantor to comply with a written or implied warranty.

16. 74. Ford's express warranties are written warranties within the meaning of the  
17. Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6). The Class Vehicles' implied warranties are  
18. covered under 15 U.S.C. § 2301(7).

19. 75. Ford breached these warranties as described in more detail above. Without  
20. limitation, the Class Vehicles are equipped with the MyFord Touch system, a defective interactive  
21. electronic unit within the Class Vehicles. The Class Vehicles share a common design defect in that  
22. the MyFord Touch System fails to operate as represented by Ford.

23. 76. Plaintiff and the other Nationwide Class members have had sufficient direct  
24. dealings with either Ford or its agents (dealerships and technical support) to establish privity of  
25. contract between Ford, on one hand, and Plaintiff and each of the other Nationwide Class members  
26. on the other hand. Nonetheless, privity is not required here because Plaintiff and each of the other  
27. Nationwide Class members are intended third-party beneficiaries of contracts between Ford and its  
28. dealers, and specifically, of Ford's implied warranties. The dealers were not intended to be the

ultimate consumers of the Class Vehicles and have no rights under the warranty agreements provided with the Class Vehicles; the warranty agreements were designed for and intended to benefit the consumers only.

77. Affording Ford a reasonable opportunity to cure its breach of written warranties would be unnecessary and futile here. Indeed, Plaintiff has already done so, and Ford has failed, after numerous attempts, to cure the defects. At the time of sale or lease of each Class Vehicle, Ford knew, should have known, or was reckless in not knowing of its misrepresentations and omissions concerning the Class Vehicles' inability to perform as warranted, but nonetheless failed to rectify the situation and/or disclose the defective design. Under the circumstances, the remedies available under any informal settlement procedure would be inadequate and any requirement that Plaintiff resorts to an informal dispute resolution procedure and/or afford Ford a reasonable opportunity to cure its breach of warranties is excused and thereby deemed satisfied.

78. Plaintiff and the other Nationwide Class members would suffer economic hardship if they returned their Class Vehicles but did not receive the return of all payments made by them. Because Ford is refusing to acknowledge any revocation of acceptance and return immediately any payments made, Plaintiff and the other Nationwide Class members have not re-accepted their Class Vehicles by retaining them.

79. The amount in controversy of Plaintiff's individual claims meets or exceeds the sum of \$25. The amount in controversy of this action exceeds the sum of \$50,000, exclusive of interest and costs, computed on the basis of all claims to be determined in this lawsuit.

80. Plaintiff, individually and on behalf of the other Nationwide Class members, seeks all damages permitted by law, including diminution in value of the Class Vehicles, in an amount to be proven at trial.

## COUNT II

## **(BREACH OF EXPRESS WARRANTY)**

81. Plaintiff incorporates by reference all allegations of Paragraphs 1-71 as though fully set forth herein.

82. Plaintiff brings this Count on behalf of the Nationwide Class.

83. Ford expressly warranted that the Class Vehicles, together with the MyFord Touch systems installed therein, were of high quality and, at a minimum, would work properly and as intended. Ford also expressly warranted that it would repair and/or replace defects in material and/or workmanship free of charge that occurred during the applicable warranty periods.

84. Ford breached this warranty by selling to Plaintiff and the other Nationwide Class members the Class Vehicles with known defective MyFord Touch Systems. As alleged hereinabove, the defective MyFord Touch Systems fail to function properly as a result of an inherent design and/or manufacturing defect. By failing to properly repair and/or replace the defective MyFord Touch Systems when Plaintiff and the other Nationwide Class members presented their vehicles to authorized Ford dealers, Ford also breached this warranty.

85. As a result of Ford's conduct, Plaintiff and the other Nationwide Class members have suffered economic damages including, without limitation, costly repairs, loss of vehicle and use of MyFord Touch, substantial loss in value and resale value of the vehicles, and other related damage.

86. Plaintiff and the other Nationwide Class members have complied with all obligations under the warranty, or otherwise have been excused from performance of said obligations as a result of Ford's conduct described hereinabove.

### COUNT III

## **(BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE)**

87. Plaintiff incorporates by reference all allegations of Paragraphs 1-71 as though fully set forth herein.

88. Plaintiff brings this Count on behalf of the Nationwide Class

89. At the time of contracting, Ford had reason to know of the Plaintiff's and other Nationwide Class members' particular purpose for purchasing or leasing a Class Vehicle with a MyFord Touch system. That particular purpose includes use of the MyFord Touch system to provide navigational direction, entertainment functions, hands-free telephone use, and the ability to call 9-1-1 in emergencies.

1. 90. Plaintiff and the other Nationwide Class members relied on Ford's skill and/or  
 2 judgment to select or furnish suitable goods, thereby creating an implied warranty that the goods  
 3 would be fit for such purpose.

4. 91. The MyFord Touch system was not fit for these purposes, as alleged hereinabove.  
 5 Thus, Plaintiff and the other Nationwide Class members were injured by Ford's conduct in  
 6 breaching the implied warranty.

7. **COUNT IV**

8. **(BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY)**

9. 92. Plaintiff incorporates by reference all allegations of Paragraphs 1-71 as though fully  
 10 set forth herein.

11. 93. Plaintiff brings this Count on behalf of the Nationwide Class.

12. 94. Ford is and was at all relevant times a merchant with respect to MyFord Touch-  
 13 equipped motor vehicles.

14. 95. The Class Vehicles, when sold and at all times thereafter, were not in merchantable  
 15 condition and are not fit for the ordinary purpose for which MyFord Touch equipped motor  
 16 vehicles are used. Specifically, the Class Vehicles are equipped with a defective MyFord Touch  
 17 unit, precluding use of the unit's various functions, including provision of navigational direction,  
 18 entertainment functions, hands-free telephone use, and the ability to call 9-1-1 in emergencies. The  
 19 Class Vehicles share a common design defect in that the MyFord Touch systems fails to operate as  
 20 represented by Ford.

21. 96. Ford was provided notice of these issues and defects through numerous complaints  
 22 filed against it, as well as internal knowledge derived from testing and internal analyses.

23. 97. Plaintiff and the other Nationwide Class members have had sufficient dealings with  
 24 either Ford or its agents (dealerships, technical support) to establish privity of contract between  
 25 Ford, on one hand, and Plaintiff and each of the other Nationwide Class members on the other  
 26 hand. Nonetheless, privity is not required here because Plaintiff and each of the other Nationwide  
 27 Class members are intended third-party beneficiaries of contracts between Ford and its dealers and,  
 28 specifically, of Ford's implied warranties. The dealers were not intended to be the ultimate

consumers of the Class Vehicles and have no rights under the warranty agreements provided with the Class Vehicles; the warranty agreements were designed for and intended to benefit the consumers only.

98. As a direct and proximate result of Ford's breach of the warranty of merchantability, Plaintiff and the other Nationwide Class members have been damaged in an amount to be proven at trial.

**B. Claims Brought on Behalf of the California Class**

## COUNT I

## **(VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW)**

99. Plaintiff incorporates by reference all allegations of Paragraphs 1-71 as though fully set forth herein.

100. Plaintiff brings this Count on behalf of the California Class.

101. California’s Unfair Competition Law (“UCL”), CAL. BUS. & PROF. CODE §§ 17200, *et seq.*, proscribes acts of unfair competition, including “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.”

102. Ford's conduct, as described hereinabove, was and is in violation of the UCL. Ford's conduct violates the UCL in at least the following ways:

i. By knowingly and intentionally concealing from Plaintiff and the other California Class members that the Class Vehicles suffer from a design defect;

ii. By marketing Class Vehicles as possessing functional and defect-free infotainment units:

iii. By misrepresenting the nature of the defect as a “compatibility issue” rather than an inherent problem with the MyFord Touch System design;

iv. By refusing or otherwise failing to repair and/or replace defective MyFord Touch systems in Class Vehicles;

v. By violating federal laws, including the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301; and

1. vi. By violating other California laws, including CAL. CIV. CODE §§ 1709, 1710,  
 2 and 1750, *et seq.*, and CAL. COMM. CODE § 2313.

3 103. As a result of Ford's misrepresentations and omissions alleged herein, Plaintiff and  
 4 the other California Class members overpaid for their Class Vehicles because the value of the  
 5 MyFord Touch system was illusory.

6 104. Ford's misrepresentations and omissions alleged herein caused Plaintiff and the  
 7 other California Class members to make their purchases or leases of their Class Vehicles. Absent  
 8 those misrepresentations and omissions, Plaintiff and the other California Class members would  
 9 not have purchased or leased these Vehicles, would not have purchased or leased these Class  
 10 Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative  
 11 vehicles that did not contain an infotainment system comparable to the MyFord Touch system and  
 12 which were not marketed as including such a system.

13 105. Accordingly, Plaintiff and the other California Class members have lost money or  
 14 property as a result of Ford's misrepresentations and omissions, in an amount to be determined at  
 15 trial.

16 106. Plaintiff seeks to enjoin further unlawful, unfair, and/or fraudulent acts or practices  
 17 by Ford under CAL. BUS. & PROF. CODE § 17200.

18 **COUNT II**

19 **(VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT)**

20 107. Plaintiff incorporates by reference all allegations of Paragraphs 1-71 as though fully  
 21 set forth herein.

22 108. Plaintiff brings this Count on behalf of the California Class.

23 109. California's Consumers Legal Remedies Act ("CLRA"), CAL. CIV. CODE §§ 1750,  
 24 *et seq.*, proscribes "unfair methods of competition and unfair or deceptive acts or practices  
 25 undertaken by any person in a transaction intended to result or which results in the sale or lease of  
 26 goods or services to any consumer."

27 110. The Class Vehicles are "goods" as defined in CAL. CIV. CODE § 1761(a).

1. 111. Plaintiff and the other California class members are “consumers” as defined in CAL.  
 2 CIV. CODE § 1761(d), and Plaintiff, the other California class members, and Defendant are  
 3 “persons” as defined in CAL. CIV. CODE § 1761(c).

4 112. In purchasing or leasing the Class Vehicles, Plaintiff and the other California Class  
 5 members were deceived by Ford’s failure to disclose that the Class Vehicles were equipped with  
 6 defective MyFord Touch systems.

7 113. Ford’s conduct, as described hereinabove, was and is in violation of the CLRA.  
 8 Ford’s conduct violates at least the following enumerated CLRA provisions:

9 i. CAL. CIV. CODE § 1770(a)(5): Representing that goods have characteristics,  
 10 uses, and benefits which they do not have;

11 ii. CAL. CIV. CODE § 1770(a)(7): Representing that goods are of a particular  
 12 standard, quality, or grade, if they are of another;

13 iii. CAL. CIV. CODE § 1770(a)(9): Advertising goods with intent not to sell them  
 14 as advertised; and

15 iv. CAL. CIV. CODE § 1770(a)(16): Representing that goods have been supplied  
 16 in accordance with a previous representation when they have not.

17 114. Plaintiff and the other California Class members have suffered injury in fact and  
 18 actual damages resulting from Ford’s material omissions and misrepresentations because they paid  
 19 an inflated purchase or lease price for the Class Vehicles.

20 115. Ford knew, should have known, or was reckless in not knowing of the defective  
 21 design and/or manufacture of the MyFord Touch systems, and that the MyFord Touch systems  
 22 were not suitable for their intended use.

23 116. The facts concealed and omitted by Ford to Plaintiff and the other California Class  
 24 members are material in that a reasonable consumer would have considered them to be important  
 25 in deciding whether to purchase or lease the Class Vehicles or pay a lower price. Had Plaintiff and  
 26 the California Class known about the defective nature of the Class Vehicles and their MyFord  
 27 Touch Systems, they would not have purchased or leased the Class Vehicles or would not have  
 28 paid the prices they paid in fact.

1. 117. Plaintiffs and the other California Class members' injuries were proximately caused  
 2 by Ford's fraudulent and deceptive business practices.

3 118. Therefore, Plaintiff and the other California Class members are entitled to equitable  
 4 relief under the CLRA.

5 119. Plaintiff has provided Ford with notice of its violations of the CLRA pursuant to  
 6 CAL. CIV. CODE § 1782(a). The notice was transmitted to Ford on July 15, 2013, and is attached to  
 7 this Complaint as Appendix A.

8 120. Notwithstanding any allegation in this Complaint, Plaintiff does not seek monetary  
 9 damages under the CLRA at this time, but will amend this Complaint to seek monetary,  
 10 compensatory, and punitive damages under the CLRA, in addition to the injunctive and other  
 11 equitable relief presently sought, in accordance with CAL. CIV. CODE § 1782.

12 **C. Claims Brought on Behalf of the Iowa Class**

13 **COUNT I**

14 **VIOLATIONS OF THE PRIVATE RIGHT OF ACTION  
 15 FOR CONSUMER FRAUDS ACT**

16 **(IOWA CODE § 714H.1, *ET SEQ.*)**

17 121. Plaintiff incorporates by reference all allegations of Paragraphs 1-120 as though  
 18 fully set forth herein.

19 122. Defendant is a "person" under IOWA CODE § 714H.2(7).

20 123. Plaintiff is a "consumer," as defined by IOWA CODE § 714H.2(3), who purchased or  
 21 leased one or more Class Vehicles.

22 124. Defendant participated in unfair or deceptive acts or practices that violated Iowa's  
 23 Private Right of Action for Consumer Fraud Act ("Iowa CFA"), IOWA CODE § 714H.1, *et seq.*, as  
 24 described above and below. Defendant is directly liable for these violations of law.

25 125. By failing to disclose and actively concealing the defects in the MyFord Touch  
 26 systems in the Class Vehicles, Defendant engaged in deceptive business practices prohibited by the  
 27 Iowa CFA, IOWA CODE § 714H.1, *et seq.*, including (1) representing that Class Vehicles have  
 28 characteristics, uses, benefits, and qualities which they do not have, (2) representing that Class

1. Vehicles are of a particular standard, quality, and grade when they are not, (3) advertising Class  
2. Vehicles with the intent not to sell them as advertised, and (4) engaging in acts or practices which  
3. are otherwise unfair, misleading, false or deceptive to the consumer.

4. 126. As alleged above, Defendant made numerous material statements about the benefits  
5. and characteristics of the MyFord Touch system that were either false or misleading. Each of these  
6. statements contributed to the deceptive context of Defendant's unlawful advertising and  
7. representations as a whole.

8. 127. Defendant knew that the MyFord Touch systems in the Class Vehicles was  
9. defectively designed or manufactured, would fail without warning, and was not suitable for its  
10. intended use. Defendant nevertheless failed to warn Plaintiff about these defects despite having a  
11. duty to do so.

12. 128. Defendant owed Plaintiff a duty to disclose the defective nature of the MyFord  
13. Touch systems in the Class Vehicles, because they:

14. i) Possessed exclusive knowledge of the defects rendering the Class  
15. Vehicles more unreliable than similar vehicles;
16. ii) Intentionally concealed the defects associated with MyFord Touch  
17. through their deceptive marketing campaign and recall program that they  
18. designed to hide the defects in the MyFord Touch system; and/or
19. iii) Made incomplete representations about the characteristics and  
20. performance of the MyFord Touch system generally, while purposefully  
21. withholding material facts from Plaintiff that contradicted these  
22. representations.

23. 129. Ford's unfair or deceptive acts or practices were likely to and did in fact deceive  
24. reasonable consumers, including Plaintiff, about the true performance and characteristics of the  
25. MyFord Touch system.

26. 130. As a result of its violations of the Iowa CFA detailed above, Ford caused actual  
27. damage to Plaintiff and, if not stopped, will continue to harm Plaintiff. Plaintiff currently owns or  
28. leases, or within the class period has owned or leased, a Class Vehicle that is defective. Defects  
associated with the MyFord Touch system have caused the value of Class Vehicles to decrease.

1. 131. Plaintiff and the Class sustained damages as a result of the Defendant's unlawful  
2 acts and are, therefore, entitled to damages and other relief as provided under Chapter 714H of the  
3 Iowa CFA. Because Defendant's conduct was committed willfully, Plaintiff seeks treble damages  
4 as provided in IOWA CODE § 714H.5(4).

5 132. Plaintiff also seeks court costs and attorneys' fees as a result of Defendant's  
6 violation of Chapter 714H as provided in IOWA CODE § 714H.5(2).

7 **COUNT II**

8 **BREACH OF EXPRESS WARRANTY**  
9 **(IOWA CODE § 554.2313)**

10 133. Plaintiff incorporates by reference all allegations of Paragraphs 1-132 as though  
11 fully set forth herein.

12 134. Ford is and was at all relevant times a merchant with respect to motor vehicles  
13 under IOWA CODE § 544.2104.

14 135. In the course of selling its vehicles, Ford expressly warranted in writing that the  
15 Class Vehicles were covered by a Basic Warranty.

16 136. Ford breached the express warranty to repair and to correct defects in materials and  
17 workmanship of any part supplied by Ford. Ford has not repaired or adjusted, and has been unable  
18 to repair or adjust, the Class Vehicles' materials and workmanship defects.

19 137. These warranties are only a sampling of the numerous warranties that Ford made  
20 relating to safety, reliability and operation of the Class Vehicles, which are more fully discussed  
21 *supra*. Generally, these express warranties promise heightened, superior, and state-of-the-art  
22 safety, reliability, performance standards, and promote the benefits of the MyFord Touch system.  
23 These warranties were made, *inter alia*, in advertisements, in Ford's brochures, and in uniform  
24 statements provided by Ford to be made by salespeople. These affirmations and promises were  
25 part of the basis of the bargain between the parties.

26 138. These additional warranties were also breached because the Class Vehicles were not  
27 fully operational, safe, or reliable (and remained so even after the problems were acknowledged  
28

1 and numerous updates have been issued), nor did they comply with the warranties expressly made  
2 to purchasers or lessees. Ford expressly warranted that it would provide fully operational, safe, and  
3 reliable vehicles at the time of sale but it breached those warranties. Ford did not provide at the  
4 time of sale, and has not provided since then, vehicles conforming to these express warranties.

5 139. Furthermore, the limited warranty of repair and/or adjustments to defective parts,  
6 fails in its essential purpose because the contractual remedy is insufficient to make the Plaintiff and  
7 the Class whole and because Ford has failed and/or has refused to adequately provide the promised  
8 remedies within a reasonable time.

9 140. Accordingly, recovery by the Plaintiff is not limited to the limited warranty of repair  
10 or adjustments to parts defective in materials or workmanship, and Plaintiff seeks all remedies as  
11 allowed by law.

12 141. Also, as alleged in more detail herein, at the time that Ford warranted and sold the  
13 Class Vehicles, they knew that the vehicles did not conform to the warranties and were inherently  
14 defective and Defendant wrongfully and fraudulently misrepresented and/or concealed material  
15 facts regarding the Class Vehicles. Plaintiff and the Class were therefore induced to purchase the  
16 vehicles under false and/or fraudulent pretenses. The enforcement under these circumstances of  
17 any limitations whatsoever precluding the recovery of incidental and/or consequential damages is  
18 unenforceable.

19 142. Moreover, many of the damages flowing from the Class Vehicles cannot be  
20 resolved through the limited remedy of "replacement or adjustments," as those incidental and  
21 consequential damages have already been suffered due to Defendant's fraudulent conduct as  
22 alleged herein, and due to their failure and/or continued failure to provide such limited remedy  
23 within a reasonable time, and any limitation on Plaintiff's and the Class' remedies would be  
24 insufficient to make Plaintiff and the Class whole.

25 143. Finally, due to the Defendant's breach of warranties as set forth herein, Plaintiff and  
26 the Class assert as an additional and/or alternative remedy, as set forth in IOWA CODE § 554.2711,  
27 for a revocation of acceptance of the goods, and for a return to Plaintiff and to the Class of the  
28

1 purchase price of all Class Vehicles currently owned and for such other incidental and  
2 consequential damages as allowed under IOWA CODE §§ 544.2711 and 544.2608.

3 144. Ford was provided notice of these issues by numerous complaints filed against it,  
4 including the instant complaint, and by numerous individual letters and communications sent by  
5 Plaintiff and the Class.

6 145. As a direct and proximate result of Ford's breach of express warranties, Plaintiff and  
7 the Class have been damaged in an amount to be determined at trial.

8 **COUNT III**

9 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**

10 **(Iowa Code § 544.2314)**

11 146. Plaintiff realleges and incorporates by reference all paragraphs as though fully set  
12 forth herein.

13 147. Ford is and was at all relevant times a merchant with respect to motor vehicles  
14 under IOWA COM. CODE § 544.2104.

15 148. A warranty that the Class Vehicles were in merchantable condition was implied by  
16 law in the instant transaction, pursuant to IOWA CODE § 544.2314.

17 149. These vehicles and the MyFord Touch systems in the Class Vehicles, when sold and  
18 at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose  
19 for which they are used. Specifically, the Class Vehicles are inherently defective in that there are  
20 defects in the MyFord Touch system which prevents the user from enjoying many features of the  
21 Class Vehicle it purchased and/or leased and that it paid for; and the MyFord Touch system was  
22 not adequately tested.

23 150. Ford was provided notice of these issues by numerous complaints filed against it,  
24 including the instant complaint, and by numerous individual letters and communications sent by  
25 Plaintiff and the Class.

26 151. As a direct and proximate result of Ford's breach of the warranties of  
27 merchantability, Plaintiff and the Class have been damaged in an amount to be proven at trial.

1. **COUNT IV**2. **BREACH OF CONTRACT/COMMON LAW WARRANTY**  
3. **(BASED ON IOWA LAW)**4. 152. Plaintiff realleges and incorporates by reference all paragraphs as though fully set  
5. forth herein.6. 153. To the extent Ford's repair or updates to the MyFord Touch systems are deemed not  
7. to be a warranty under the Uniform Commercial Code as adopted in Iowa, Plaintiff pleads in the  
8. alternative under common law warranty and contract law. Ford limited the remedies available to  
9. Plaintiff and the Class to just repairs and adjustments needed to correct defects in materials or  
10. workmanship of any part supplied by Ford, and/or warranted the quality or nature of those services  
11. to Plaintiff.13. 154. Ford breached this warranty or contract obligation by failing to repair the defective  
14. Class Vehicles, or to replace them.16. 155. As a direct and proximate result of Defendant's breach of contract or common law  
17. warranty, Plaintiff and the Class have been damaged in an amount to be proven at trial, which shall  
18. include, but is not limited to, all compensatory damages, incidental and consequential damages,  
19. and other damages allowed by law.20. **VIII. REQUEST FOR RELIEF**21. WHEREFORE, Plaintiff, individually and on behalf of the other members of the Classes, as  
22. proposed in this Complaint, respectfully requests that the Court enter judgment in its favor and  
23. against Defendant, Ford Motor Company, as follows:24. A. Declaring that this action is a proper class action, certifying the Classes as requested  
25. herein, designating Plaintiff as a Representative of the Classes, and appointing Plaintiff's attorneys  
26. as Class Counsel;

1. B. Enjoining Defendant from continuing the unfair business practices alleged in this
2. Complaint and requiring Defendant to institute a recall or free replacement program;
3. C. Ordering Defendant to pay actual damages (including punitive damages) to Plaintiff
4. and the other members of the Classes, as allowable by law;
5. D. Ordering Defendant to pay both pre- and post-judgment interest on any amounts
6. awarded;
7. E. Ordering Defendant to pay attorneys' fees and costs of suit; and
8. F. Ordering such other and further relief as may be just and proper.

9. **IX. JURY TRIAL DEMAND**

10. Plaintiff, by counsel, requests a trial by jury on its legal claims, as set forth herein.

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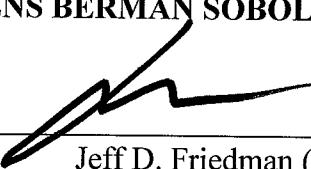
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28.

1 Dated: July 19, 2013

2 **HAGENS BERMAN SOBOL SHAPIRO LLP**

3 By: \_\_\_\_\_

4   
Jeff D. Friedman (173886)

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*Counsel for Plaintiff Thomas Mitchell*

# **APPENDIX A**



HAGENS BERMAN

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July 18, 2013

**VIA CERTIFIED MAIL,**  
**RETURN RECEIPT REQUESTED**

David G. Leitch, Esq.  
 Group Vice President and General Counsel  
 Ford Motor Company  
 One American Road  
 Dearborn, Michigan 48126

Re: *Thomas Mitchell v. Ford Motor Co.*

Dear Mr. Leitch:

Our law firm represents Thomas Mitchell (“Plaintiff”) and all others similarly situated (the “Class”) in an action against Ford Motor Company (“Ford”) arising out of alleged misrepresentations, breaches of warranty, and violations of consumer protection statutes with regard to all Ford, Lincoln, and Mercury vehicles equipped with the MyFordTouch, MyLincolnTouch, or MyMercuryTouch infotainment units (the “MyFordTouch Systems”).

Plaintiff and the other members of the proposed Class purchased Ford, Lincoln, or Mercury vehicles equipped with MyFordTouch Systems, unaware that the MyFordTouch Systems fail to function as intended and as Ford represents. Specifically, the MyFordTouch Systems contain an inherent defect that renders them incapable of functioning as intended and as represented by Ford, leading the MyFordTouch Systems to fail to connect with peripheral devices (including, without limitation, MP3 players and smartphones) and to fail to provide navigational direction, entertainment functions, hands-free telephone use, and the ability to call 911 in emergencies. At the time of purchase, consumers have no way of knowing that the MyFordTouch Systems are defective. The full claims, including the facts and circumstances surrounding these claims, are detailed in the enclosed Class Action Complaint (“Complaint”). We intend to amend the Complaint to assert a claim for damages without leave of court under the California Consumer Legal Remedies Act pursuant to Cal. Civ. Code § 1782(d) within 30 days unless Ford takes corrective actions, as detailed below, and tenders a reasonable offer of settlement of Plaintiff’s and the other Class members’ claims.

Ford’s omissions and false representations to consumers about the MyFordTouch Systems were misleading, constitute unfair methods of competition, and unlawful, unfair, and fraudulent acts or practices undertaken with the intent to induce the consuming public to purchase or lease vehicles equipped with those units. Ford’s misrepresentations about the MyFordTouch Systems do not assist consumers; they only mislead them.

David G. Leitch, Esq.  
July 18, 2013  
Page 2

Ford's representations violate California Civil Code § 1770(a) under, among other things, the following subdivisions:

(5) Representing that the MyFordTouch Systems and vehicles in which those units are installed have characteristics, uses, and benefits which they do not have.

\* \* \*

(7) Representing that the MyFordTouch Systems and vehicles in which those units are installed are of a particular standard, quality or grade, if they are of another.

\* \* \*

(9) Advertising goods . . . with the intent not to sell them as advertised.

\* \* \*

(16) Representing that goods have been supplied in accordance with a previous representation when they have not.

California Civil Code § 1770(a)(5), (7), (9), (16).

Ford's representations and material omissions also constitute violations of California Business and Professions Code § 17200, *et seq.* Furthermore, Ford's actions constitute breaches of express warranty, the implied warranties of merchantability and fitness for a particular purpose, and violations of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301.

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code § 1782, we hereby demand on behalf of Plaintiff and all others similarly situated, that Ford immediately correct and rectify this violation of California Civil Code § 1770 by ceasing the misleading marketing campaign and ceasing the dissemination of the false and misleading information as described in the enclosed Complaint. In addition, Ford must offer appropriate refunds to all consumers who purchased Ford, Lincoln, or Mercury vehicles equipped with the MyFordTouch Systems, plus interest, costs, and reasonable attorneys' fees.

Plaintiff will, after 30 days from the date of this letter, amend the attached Complaint to include claims for Plaintiff's and the Class' actual and punitive damages (as may be appropriate as permitted by California Civil Code § 1782) available under the Consumers Legal Remedies Act if a full and adequate response to this letter is not received.

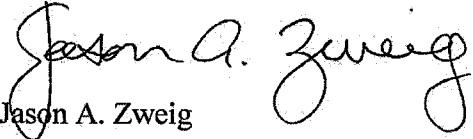
David G. Leitch, Esq.  
July 18, 2013  
Page 3

Ford must undertake all of the following actions to satisfy the requirements of California Civil Code § 1782(c):

1. Identify or make a reasonable attempt to identify those individuals and entities that purchased or leased any Ford, Lincoln, or Mercury vehicle equipped with the MyFordTouch System;
2. Notify all such purchasers and lessees so identified that upon their request, Ford will offer an appropriate remedy for its wrongful conduct, which can include a full refund of the purchase price paid for the vehicle, plus interest, costs, and reasonable attorneys' fees;
3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all the Ford, Lincoln, and Mercury vehicle purchasers and lessees who so request; and
4. Cease from expressly or impliedly representing to consumers that the MyFordTouch Systems are non-defective, as more fully described in the enclosed Complaint.

We await your response.

Yours sincerely,

  
Jason A. Zweig

Enclosure

cc: Counsel for Plaintiff (by .pdf email w/o enclosure)